



Food and
Nutrition
Service

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DATE: March 26, 2021

CODE: COVID-19: Child Nutrition Response #82

SUBJECT: Nationwide Waiver of Community Eligibility Provision Deadlines in the National School Lunch and School Breakfast Programs¹

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Issuing Agency/Office:	FNS/Child Nutrition Programs
Title of Document:	Nationwide Waiver of Community Eligibility Provision Deadlines in the National School Lunch and School Breakfast Programs
Document ID:	
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Date of Issuance:	March 26, 2021
Replaces:	N/A
Summary:	(1) FNS is establishing a targeted waiver, for all States and local educational agencies, to extend statutory and regulatory deadlines relating to Community Eligibility Provision reporting and election during the public health emergency due to COVID-19. (2) This waiver applies to State agencies administering and local organizations operating the: National School Lunch Program and the School Breakfast Program. (3) This document relates to: 42 U.S.C. 1759a(a)(1)(F)(iii)(I)(bb); 42 U.S.C. 1759a(a)(1)(F)(v)(I); 42 U.S.C. 1759a(a)(1)(F)(x)(I), (II) and (IV); 7 CFR 245.9(f)(3)(i); 7 CFR 245.9(f)(4)(i) and (iv); 7 CFR 245.9(f)(5) and (6); and 7 CFR 245.9(f)(4)(i).
Disclaimer:	The contents of this guidance document have the force and effect of law as authorized by the Families First Coronavirus Response Act (the Act) (P.L. 116-127), as extended by the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159).

Pursuant to the Families First Coronavirus Response Act (the FFCRA) (P.L. 116-127), as extended by the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159), and based on the exceptional circumstances of this public health emergency, the Food and Nutrition Service (FNS) is establishing a nationwide waiver to support the Community Eligibility Provision (CEP) while schools are responding to COVID-19.

¹ Pursuant to the Congressional Review Act (5 U.S.C. §801 et seq.), the Office of Information and Regulatory Affairs designated this waiver as not major, as defined by 5 U.S.C. § 804(2).

This waiver applies to State agencies and local educational agencies (LEAs) administering the National School Lunch Program (NSLP), School Breakfast Program (SBP), and CEP.

Section 2202(a) of the FFCRA permits the Secretary of Agriculture to establish a waiver for all States for the purposes of providing meals and meal supplements under the NSLP or SBP, with appropriate safety measures with respect to COVID–19. This waiver shall remain in place until September 30, 2021.

Calculating Identified Student Percentages

Under Sections 11(a)(1)(F)(iii)(I)(bb) and (a)(1)(F)(v)(I) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1759a, LEAs must calculate the CEP identified student percentage (ISP) using data as of April 1 of the prior school year. FNS regulations further require at 7 CFR 245.9(f)(3)(i) and 245.9(f)(4)(i) that LEAs intending to elect CEP or conduct a grace year in the following school year must submit to the State agency counts of identified and enrolled students as of April 1 of the prior school year. However, FNS recognizes that in this public health emergency, alternative feeding operations that are necessary to support social distancing are demanding State and LEA resources. To facilitate the safe provision of meals and reduce exposure to COVID–19, many LEAs are currently serving meals through the summer meal programs. Due to these factors, additional time is necessary to safely gather accurate identified student and benefits data in order to meet upcoming CEP deadlines. Furthermore, utilization of CEP will allow LEAs to continue to avoid point of service interactions to determine payment for school lunches and breakfasts.

Therefore, FNS waives, for all States and LEAs, the requirement that LEAs base the ISP on data as of “April 1 of” the prior school year in the above referenced statutory and regulatory citations. Instead, LEAs electing CEP, establishing a new ISP, or conducting a grace year for school year (SY) 2021-2022, may calculate the ISP using data drawn at any time during the prior school year (July 1, 2020, through June 30, 2021).

Local Educational Agency Notification Requirements

Under Section 11(a)(1)(F)(x)(IV) of the NSLA, 42 U.S.C. 1759a, annually by May 1, LEAs must submit to the State agency lists of schools that:

- Have an ISP of at least 40 percent (eligible for CEP);
- Have an ISP greater than or equal to 30 percent but less than 40 percent (near-eligible for CEP); and
- Are currently in the fourth year of CEP participation with an ISP greater than or equal to 30 percent but less than 40 percent (eligible for grace year).

Regulations at 7 CFR 245.9(f)(5) establish this deadline as April 15.

Based on this public health emergency, FNS waives, for all States and LEAs, the requirement in statute that LEAs must submit the above referenced lists “Not later than May 1 of” each school year and the requirement in regulation that LEAs must submit the above referenced lists “No later than April 15 of” each school year. Instead, LEAs must submit the required lists to State agencies by June 30, 2021. As always, State agencies that already have access to school-level information may exempt LEAs from this requirement.

State Agency Notification Requirements

Under Section 11(a)(1)(F)(x)(II) of the NSLA, 42 U.S.C. 1759a, State agencies must annually notify each LEA of district-wide eligibility for CEP in the following categories:

- LEAs with a district-wide ISP of at least 40 percent (eligible for CEP);
- LEAs with a district-wide ISP greater than or equal to 30 percent but less than 40 percent (near-eligible for CEP);
- LEAs currently participating in CEP; and
- LEAs in the fourth year of CEP participation with a district-wide ISP greater than or equal to 30 percent but less than 40 percent (eligible for grace year).

Regulations at 7 CFR 245.9(f)(6) establish this deadline as April 15.

In this public health emergency, FNS waives, for all States, the requirement in statute that State agencies must complete the notification requirements described above “Not later than May 1 of” each school year and the requirement in regulation that State agencies must complete notification requirements described above “No later than April 15 of” each school year. Instead, State agencies must notify LEAs of CEP eligibility by June 30, 2021.

State Agency Publication Requirement

Section 11(a)(1)(F)(x)(III) of the NSLA, 42 U.S.C. 1759a, requires that, no later than May 1 of each school year, State agencies submit to the Secretary lists of LEAs and schools identified above in State agency and LEA notification requirements. Regulations at 7 CFR 245.9(f)(7) also require that State agencies make the lists of LEAs and schools readily accessible on a State agency website by May 1 of each school year.

In this public health emergency, FNS waives, for all States, the requirement in statute that State agencies must submit the lists described above “Not later than May 1 of” each school year, and the requirement in regulation that State agencies make the lists readily accessible on a public website “By May 1 of” each school year. Instead, State agencies must make the above-referenced lists publicly available on State agency websites by June 30, 2021. By June 30, 2021, State agencies must also submit the lists of CEP-eligible LEAs and schools to USDA by emailing a link to the lists posted on the State agency website; the email must be sent to sm.fn.cepnotification@usda.gov.

June 30 Election Deadline

Section 11(a)(1)(F)(x)(I) of the NSLA, 42 U.S.C. 1759a, requires that LEAs that intend to elect CEP in the following school year notify the State agency and submit ISP documentation by June 30. This requirement is codified in FNS regulations at 7 CFR 245.9(f)(4)(i).

In this public health emergency, FNS waives, for all States and LEAs, the statutory requirement that LEAs intending to elect CEP for SY 2021-2022 must submit ISP documentation by “not later than June 30 of the current school year”, and the corresponding regulatory requirement that such documentation must be submitted “no later than June 30”. Instead, LEAs that intend to elect CEP for SY 2021-2022 must submit ISP documentation to the State agency by September 30, 2021.

Summary

In summary, this waiver makes the following adjustments to annual CEP deadlines.

CEP Requirement	Annual Deadline	Waiver Deadline
Data Used to Calculate ISP	April 1	Anytime between July 1, 2020, and June 30, 2021
LEA Notification	April 15	June 30, 2021
State Agency Notification	April 15	June 30, 2021
State Agency Publication	May 1	June 30, 2021
Elect CEP for SY 2021-2022	June 30	September 30, 2021

Please note, FNS will continue to monitor the needs of State agencies and LEAs during this challenging time and consider additional extensions of the deadlines if necessary.

Consistent with Section 2202(a)(2) of the FFCRA, this waiver applies automatically to all States that elect to use it, without further application. State agencies must inform their Regional Office if they elect to be subject to the waiver. State agencies should inform local Program operators of the flexibilities provided by this waiver as quickly as possible, and work in partnership with local operators to provide meals to all participants in a safe and accessible manner.

As required by Section 2202(d) of the FFCRA, each State that elects to be subject to this waiver must submit a report to the Secretary not later than 1 year after the date such State elected to receive the waiver. The report must include:

- A summary of the use of this waiver by the State agency and LEAs, and
- A description of whether and how this waiver resulted in improved services to Program participants.

FNS appreciates the exceptional effort of State agencies and local Program operators working to meet the nutritional needs of participants during this challenging time. State agencies should direct questions to the appropriate FNS Regional Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Ang M Kline". The signature is written in a cursive, flowing style.

Angela M. Kline
Director
Policy and Program Development Division